

PART 12

ACQUISITION OF COMMERCIAL ITEMS

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SUBPART 12.1 - ACQUISITION OF COMMERCIAL ITEMS - GENERAL.

12.102 Applicability.

(a)(90) Part 12 is mandatory, except for the exemptions at FAR 12.102(d), if --

(i) The Commercial Off-The-Shelf (COS) field in the Contracting Technical Data File (CTDF) is coded "Y," which indicates the item meets the definition of commercial item at FAR 2.101 (see FAR 10.002(d)(1));

(ii) The COS field is blank, but the item or service is clearly a type that is used by non-Government customers and that would meet the definition of commercial item at FAR 2.101; or

(iii) An available commercial item that will satisfy the government's requirement is identified by --

(A) A response to Commerce Business Daily (CBD) Numbered Note 26 (see FAR 5.207(e)(4) and 10.002(d)(2)); or

(B) Other market research (see FAR 10.001).

(91) Part 12 cannot be used if --

(i) The COS field is coded "N;"

(ii) The COS field is blank, but the item or service is clearly Government-unique (see FAR 10.002(d)(2)); or

(iii) The following conditions apply --

(A) The COS field is blank;

(B) It is not clear whether the item or service is a type that is used by non-Government customers;

(C) The acquisition is below the simplified acquisition threshold (SAT); and

(D) It is not cost-effective to conduct market research (see FAR 10.001(a)(2)(iii)).

SUBPART 12.2 - SPECIAL REQUIREMENTS FOR THE ACQUISITION OF COMMERCIAL ITEMS.

12.207 Contract type.

(90) Indefinite-delivery contracts may also provide for economic price adjustment using a locally developed clause to set firm contract prices based on prevailing established catalog or market prices (FAR 15.804-1(b)(2)) in accordance with FAR 16.501-2(c),

12.208 Contract quality assurance.

(90) Reliance on contractors' quality assurance systems is preferred. However, other quality assurance practices (such as in-process, in-plant inspection for critical application or complex items) are considered consistent with customary commercial practice when market research indicates they are at least sometimes used in the industry for items that are the same as or similar to the ones being acquired. When Government inspection and testing before tender for acceptance are determined necessary and cannot be considered consistent with customary commercial practices, the contracting officer may request a waiver in accordance with FAR and DLAD 12.302(c).

SUBPART 12.3 - SOLICITATION PROVISIONS AND CONTRACT CLAUSES FOR THE ACQUISITION OF COMMERCIAL ITEMS

12.301 Solicitation provision for acquisition(s) of commercial items.

(90) The contracting officer shall insert the provision at 52.212-9000 in all acquisitions of commercial items. This provision shall not be tailored.

(b)(2)(90) When the conditions at 13.103 and 13.104 apply, use the provision at 52.213-9004, Offeror Representations, Certifications, and Fill-in Information--Electronic Commerce, instead of FAR provision 52.212-3.

(e) Discretionary use of FAR provisions and clauses. Subject to the procedures in FAR and DLAD 12.302, the contracting officer may

(90) Include other DLAD and locally developed provisions and clauses; and

(91) If necessary, make accompanying changes to the provision at FAR 52.212-1 and the clause at FAR 52.212-4.

12.302 Tailoring of provisions and clauses for the acquisition of commercial items.

(a) Terms and conditions that can reasonably be presumed to have application in both government and commercial markets (e.g., shipping instructions for extreme climates) may be included in solicitations and contracts for commercial items without conducting additional market research.

(b)(3) When fast payment procedures are authorized (see DLAD Subpart 13.3), contracting officers may revise the paragraph at FAR 52.212-4(i), Payment, as necessary to reflect fast payment procedures, which are authorized when specified conditions are met pursuant to the Prompt Payment Act and OMB Circular A-125. This is not considered tailoring.

(4) Contracting officers may delete from solicitations and contracts the portions of the provisions at FAR 52.212-3 and DFARS 252.212-7000 and the clauses at FAR 52.212-5 and DFARS 252.212-7001 that do not apply and replace them with applicable language, if any. This is not considered tailoring.

(c) Tailoring inconsistent with customary commercial practice. Approval authority for waivers under FAR 12.302(c) is delegated to one level above the contracting officer.

SUBPART 12.5 - APPLICABILITY OF CERTAIN LAWS TO THE ACQUISITION OF COMMERCIAL ITEMS

12.504 Applicability of certain laws to subcontracts for the acquisition of commercial items.

(90) For the purposes of flowdown requirements pursuant to Part 12, Distribution and Pricing Agreements (DAPA) shall be treated as subcontracts (see the clauses at FAR 52.212-5(e) and 52.244-6(c)).